IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 441 of 1990

Hon'ble MR.JUSTICE Y.B.BHATT

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALABHAI B DABHI

Versus

GORDHANBHAI G BHARAKHADA

Appearance:

MR PV HATHI for Petitioners

MR PJ KANABAR for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/12/2001

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendants who were sued by the respondent-plaintiff landlord before the Rent Court under section 28 of the said Act, for a decree of possession against them.

2. The respondent-plaintiff landlord had sued the defendants for a decree of eviction on three grounds, namely, that the first defendant who was the tenant had illegally sublet the suit premises to defendant no.2 who was the sub-tenant, that the first defendant-tenant was in arrears of rent for more than six months on the date of the suit notice and had not paid up the arrears within 30 days of the service of the suit notice, and that the landlord required the suit premises for his bonafide and reasonable use.

3. The last ground viz. the landlord's bonafide requirement for personal use was not pressed before the trial court. However, on the other two issues the trial court, after framing appropriate issues and taking into consideration the totality of the evidence led by the parties before it, decreed the suit of the landlord on the ground that the first defendant-tenant was in arrears of rent for more than six months and he had not paid up the arrears within 30 days of the service of the suit notice, and that the first defendant-tenant had unlawfully sublet the suit premises to his sub-tenant viz. the second defendant. The trial court, therefore, passed a decree of eviction against the defendants.

4. The two defendants thereupon preferred an appeal under section 29 of the Rent Act, which came to be dismissed by judgement and order of the lower appellate court, confirming the decree of eviction passed by the trial court on the two grounds mentioned hereinabove.

5. As aforesaid, this is a revision under section 29(2) of the Bombay Rent Act at the instance of the original defendants.

6. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of

no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

7. The tenanted premises consists of ground floor and first floor together with terrace on the said first floor. The landlord alleged that this composite property was let out to the first defendant as a tenant. On the other hand, the defendants contended in the suit that the first defendant was tenant of the first floor, whereas the second defendant was an independent tenant on the ground floor. It is pertinent to note that both the defendants have filed a common written statement at Exh.31.

8. So far as the landlord's claim that the first defendant-tenant was in arrears of rent for more than six months on the date of the suit notice and has not paid up the dues within 30 days of the service of the suit notice is concerned, the landlord has examined himself at Exh.37, and the son of the plaintiff viz. Shantilal Gordhanbhai has also been examined at Exh.60. It is pertinent to note that the plaintiff-landlord and his two sons are partners in a common business and that the accounts of the business as also the personal accounts of the plaintiff are maintained both by the plaintiff-father and his son Shantilal Gordhanbhai. This aspect is not in dispute.

9. The plaintiff Gordhanbhai has categorically deposed that both the ground floor and the first floor were let out to the first defendant as the only tenant, that he had never rented out the ground floor property to the second defendant, that the second defendant has been inducted into the premises by the first defendant as his sub-tenant, and that the rent paid by the tenant was noted in the account books regularly maintained. The trial court, after appreciating the oral evidence of the plaintiff Gordhanbhai (Exh.37) and his son Shantilal (Exh.60), came to the conclusion that the totality of the evidence viz. two oral depositions supported by the books of accounts, amply substantiated the plaintiff's case that the tenant was in arrears of rent for more than six months and has not paid up the arrears within 30 days of the service of the suit notice.

10. Learned counsel for the petitioners sought to contend various aspects of the matter dealing with the evidentiary value of the evidence led by the landlord. It was contended that since there was no rent note

executed between the parties, and since the landlord was not issuing receipts for the rent received, the landlord could not be believed when he deposed that on the date of the suit notice there were arrears of rent for more than six months. This contention does not bear scrutiny for the simple reason that the arrears of rent as claimed by the landlord are not conclusively proved merely on account of his oral deposition, but are buttressed by credible documentary evidence. The case of the landlord is established on account of the oral deposition of the landlord himself, supported by the deposition of his son Shantilal at Exh.60, both of which are supported by the books of accounts proved on the record of the case. It may be kept in mind that the son Shantilal who is also a partner in the business of the plaintiff-landlord is obviously a literate person who was also writing the account books, together with his father Gordhanbhai. The plaintiff's son Shantilal has fairly admitted in his deposition that some entries in the accounts are in the hand-writing of his father and some entries are in his own hand-writing. This by itself cannot be said to be a deficiency or could be considered as a negative aspect, inasmuch as it is usual in the natural course of events that when the father and the son are partners in a common business and both are literate, both would be writing the accounts from time to time as circumstances may require. It is certainly not the defendants' case that Rojmel entries were made by one person and the entries in the Khatavahi for the relevant date were made by another person.

11. Much has been sought to be made out by learned counsel for the petitioners by pointing out the cross-examination of the son Shantilal who has proved the books of accounts. It was sought to be suggested to Shantilal in his cross-examination, by various modes, means and methods, that the account books were fabricated and manufactured only for the purpose of creating evidence. These suggestions and allegations have been refuted by Shantilal.

11.1 As against this evidence of the plaintiff-landlord, the defendant no.1 tenant firstly asserted that he was not in arrears of rent. Admittedly he has no receipts of payment of rent. In his cross-examination he admits that he had not gone to the landlord Gordhanbhai in person to pay the rent. The tenant also does not have any money order receipts, so much so, that the defendant no.1 tenant is also unable to fall back upon the usual resort to "chits" to which a tenant would refer to and rely upon to indicate that he

had paid up the due rent from time to time. Thus, on the one hand the defendants have nothing more than an oral assertion to indicate that they have paid up due rent, as against which the plaintiff and his son have established through oral evidence as also by books of accounts to show that the tenant was in arrears of rent for more than six months on the date of the suit notice and had not paid up such arrears within 30 days of the service thereof.

12. It was then sought to be contended that the suit notice was not served upon the defendants at all. When confronted with the fact that the suit notice was sent by registered post and that the receipt thereof was evidenced by the production and proof of the AD slips signed by the two defendants, the first defendant in his evidence denied that the AD slip bore his signature. At the same time, the first defendant conceded that he has no grievance against the postal department nor against the postman who normally delivers to his address. However, apart from a mere denial the first defendant did not make any further attempt to show that the AD slip did not in fact bear his signature. He could very well have asked the Court to compare his admitted signature on the Vakalatnama of his lawyer with the disputed signature on the AD slip, if not resorting to expert evidence of a hand-writing expert. Even otherwise, the signature of the tenant on the AD slip is proved by Gordhanbhai at Exh.39.

13. It requires to be noted that there is no controversy that the defendant no.2 (who is the alleged sub-tenant of defendant no.1) is the maternal nephew of the first defendant, and that the two defendants are both employed as driver and conductor respectively with the Gujarat State Road Transport Corporation. These facts also support and corroborate the evidence led by the landlord to establish sub-tenancy.

14. The second defendant Parshottambhai in his deposition at Exh.83 put up a case that when he was inducted into the ground floor of the premises as an independent tenant on 20th March 1972, and the same property was last occupied by one Ramniklal. In other words, it is the case of the defendant no.2 that the said Ramniklal was the ex-tenant of the premises who vacated just prior to his being inducted into the premises. However, apart from this oral assertion, the second defendant has made no attempt to support his oral version by examining the said Ramniklal, and/or neighbours.

15. The second defendant also deposed that when he became a tenant of the ground floor of the suit premises, no-one but himself was aware of this fact situation. In the context of this statement, the courts below were amply justified in holding that the second defendant is not deposing to the truth, inasmuch as if he was telling the truth, his maternal uncle occupying the first floor could not have been unaware of this fact. The second defendant also asserted that when he occupied the suit property, he was not told by defendant no.1 as to what were the terms of tenancy under which the first defendant was a tenant, nor had he inquired from the first defendant as regards the terms. This bold and brash assertion obviously cannot be accepted in view of the fact that the second defendant is a maternal nephew of the first defendant. It is also pertinent to note that it is an admitted position that neither of the defendants has paid up the arrears of rent within 30 days of the service of the suit notice.

16. Learned counsel for the petitioners sought to rely upon a decision of the Bombay High Court in the case of Anita Vs. Abdul Wahid, reported in AIR 1985 Bombay 98. It may be noted that this decision is merely persuasive, and in view of the fact that it has been delivered in the year 1985, cannot be regarded to be a decision of the parent High Court so far as this court is concerned.

16.1 Even otherwise, the said decision is sought to be relied upon only to the extent that it lays down the principles laid down by Order 41, Rule 31, CPC to the extent that the appellate court must state the points for determination and must cover all the important questions covered in the case, and that a mere statement as to whether the judgement of the court below is correct, illegal or valid is not sufficient.

16.2 When the judgement of the lower appellate court is examined in the context of this submission, it is found that the points for determination raised therein are no doubt trite as also terse, but the judgement as a whole covers all the points which were raised before the lower appellate court. In this context it is relevant to note that it could not be urged by the learned counsel for the petitioners that certain specific points, which in fact arose before the lower appellate court, were in fact not considered at all.

17. Learned counsel for the petitioners also sought to rely upon a decision in the case of Shubhkaran Vs.

Durgaprasad (P) Ltd., reported at 13 GLR 179, where the principle laid down is that the entries in the books of accounts are not by themselves sufficient to fasten liability upon a party affected by such entries, in the light of section 34 of the Evidence Act. There cannot be any controversy as to this principle. The basis of the principle is only that merely, and only the account entries by themselves, cannot fasten liability on the party so affected by the entries. On the facts of the case it is not as though the account entries, which are on record as evidence in the matter, are the sole basis upon which liability is fastened on the defendants. On the contrary, the account entries have been proved on record and also relied upon by the plaintiff in support and corroboration of the oral evidence viz. the evidence of the landlord and the oral evidence of his son and partner.

18. In the premises aforesaid, I find that there is no substance in the present revision and the same is, therefore, dismissed. Rule is discharged with costs.

19. At this stage learned counsel for the petitioners seeks some time to enable the petitioners to vacate the suit premises. By consent of learned counsel for the respondent, time is granted upto 30th June 2002, subject to each of the petitioners filing the usual undertaking on usual terms latest by 18th February 2002 with a clarification that there shall be no extension of time for this purpose.

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